



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2014-0008]**

**Qualification of Drivers; Exemption Applications; Vision**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of applications for exemptions; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 5 individuals for exemption from the vision requirement for operating a commercial motor vehicle (CMV) in the Federal Motor Carrier Safety Regulations. The applicants are unable to meet the vision requirement in one eye for various reasons. The exemptions will allow these individuals to operate CMVs in interstate commerce without meeting the prescribed vision requirement in one eye. At the end of the comment period, the Agency will grant exemptions to the applicants listed herein if there are no adverse comments that indicate the driver's ability will not achieve a level of safety equivalent to or greater than the level of safety that would be obtained by complying with the regulations. All comments will be reviewed and evaluated by FMCSA. Some individuals appearing in this notice may not receive exemptions based on comments received during the comment period. Individuals not granted an exemption may either be published at a future date based on further evaluation or may not be deemed to meet the aforementioned level of safety if granted an exemption. These individuals will be published in a quarterly notice of exemption denials. As always, any adverse comments received after the exemption is granted will be evaluated, and if they indicate that the driver is not achieving a level of safety equivalent to or greater than the level of safety that would be obtained by

complying with the regulation, the exemption will be revoked. When granted, the exemptions will allow these individuals with vision deficiencies in one eye to operate in interstate commerce.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. All comments will be investigated by FMCSA. The exemptions will be issued the day after the comment period closes.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA-2014-0008 using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Fax: 1-202-493-2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments,

go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the Federal Register on January 17, 2008 (73 FR 3316).

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Papp, Chief,  
Medical Programs Division, (202) 366-4001, [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov), FMCSA,  
Department of Transportation, 1200 New Jersey Avenue, S.E., Room W64-224,  
Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds “such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.” The statute also allows the Agency to renew

exemptions at the end of the 2-year period. The 5 individuals listed in this notice have recently requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency has evaluated the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

### **Qualifications of Applicants**

#### *Christopher D. Bolomey*

Mr. Bolomey, 40, has strabismus, a cataract, and optic nerve damage in his right eye due to a traumatic incident during childhood. The visual acuity in his right eye is light perception, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, “Needs to be checked for Federal DOT exemption. No changes to vision. Snce [sic] LEE [sic] 12-31-2013...Pass for DOT or Fed Driving w/ [sic] correcton [sic].” Mr. Bolomey reported that he has driven tractor-trailer combinations for 10 years, accumulating 875,500 miles. He holds a Class A CDL from Missouri. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

#### *Leamon V. Manchester*

Mr. Manchester, 46, has complete loss of vision in his left eye due to a traumatic incident during childhood. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2014, his ophthalmologist stated, “Mr. Manchester [sic] vision status meets the requirements to operate a commercial motor vehicle.” Mr. Manchester reported that he has driven straight trucks for 20 years, accumulating 1.75 million miles, and tractor-trailer combinations for 20 years,

accumulating 2 million miles. He holds an operator's license from Louisiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Leverne F. Schulte Jr.*

Mr. Schulte, 57, has a large corneal scar resulting in poor vision in his right eye due to a traumatic incident during childhood. The visual acuity in his right eye is light perception, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, "I examined Mr. Schulte on April 3, 2014. He wanted to get an interstate CDL. Currently he has intrastate license only. He has a history of an injury to his right cornea...Since he is presently driving in the state and has no trouble [*sic*] I don't see any danger in him driving across the state line." Mr. Schulte reported that he has driven straight trucks for 21 years, accumulating 42,000 miles, and tractor-trailer combinations for 37 years, accumulating 277,500 miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Clark D. Workman*

Mr. Workman, 56, has had Coats' disease and a branch retinal artery occlusion resulting in a macular scar in his left eye since 2009. The visual acuity in his right eye is 20/20, and in his left eye, 20/70. Following an examination in 2014, his optometrist stated, "I certify in my medical opinion the Mr [*sic*] Workman has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Workman reported that he has driven straight trucks for 36 years, accumulating 72,000 miles, and tractor-trailer combinations for 38 years, accumulating 190,000 miles. He holds a Class

A CDL from Idaho. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Paul M. Wooton*

Mr. Wooton, 36, has a macular scar in his left eye due to a traumatic incident during childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/70. Following an examination in 2014, his ophthalmologist stated, “I have recommended that he is safely about to operate [*sic*] the commercial motor vehicle as he has good peripheral vision and fairly decent central vision with the left eye.” Mr. Wooton reported that he has driven straight trucks for 5 years, accumulating 150,000 miles, and tractor-trailer combinations for 2 years, accumulating 150,000 miles. He holds a Class DA CDL from Kentucky. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

FMCSA has evaluated the eligibility of the 5 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(10). Absent the receipt of comments indicating that a driver’s ability would not achieve the aforementioned level of safety, the Agency will grant the drivers an exemption the day after the comment period closes.

### **Vision and Driving Experience of the Applicants**

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective

lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber (49 CFR 391.41(b)(10)).

MCSA recognizes that some drivers do not meet the vision requirement but have adapted Ftheir driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 5 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, and in most cases their eye conditions were not recently developed. Four of the applicants were either born with their vision impairments or have had them since childhood. The one individual that sustained his vision condition as an adult has had it for 5 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 5 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. The qualifications, experience, and medical condition of each applicant is stated and discussed in detail above.

### **Basis for Exemption Determination**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of



crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA-1998-3637.

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors – such as age, sex, geographic location, mileage driven and conviction history – are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., “Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,” Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and non-concurrent events is the number of single

convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 5 applicants, none of the drivers were involved in crashes or convicted of moving violations in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

FMCSA believes that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing

without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 5 applicants listed in this notice.

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 5 individuals consistent with the Grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) that each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was

granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

### **Request for Comments**

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

### **Submitting Comments**

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and in the search box insert the docket number FMCSA-2014-0008 and click the search button. When the new screen appears, click on the blue “Comment Now!” button on the right

hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

### **Viewing Comments and Documents**

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to <http://www.regulations.gov> and in the search box insert the docket number FMCSA-2014-0008 and click “Search.” Next, click “Open Docket Folder” and you will find all documents and comments related to the proposed rulemaking.

Issued on: July 10, 2014.

---

Larry W. Minor,  
Associate Administrator for Policy.

[FR Doc. 2014-16796 Filed 07/16/2014 at 8:45 am; Publication Date: 07/17/2014]